

In the United States Court of Federal Claims

OFFICE OF THE SPECIAL MASTERS

No. 10-710V

Filed: November 20, 2012

PHILIP STEAHL,

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NOT TO BE PUBLISHED

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Petitioner,

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Special Master Zane

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v.

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Stipulation; Tdap Vaccine;

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Devic's disease; Myalgias;

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Neuromyelitis optica;

SECRETARY OF HEALTH
AND HUMAN SERVICES,

*

Partial Transverse Myelitis;

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Attorneys' fees & costs

Respondent.

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Jason W. Whitley, Novitzke, Gust, Sempf & Whitley, Amery, WI, for Petitioner

Debra A. Filteau Begley, United States Dep't of Justice, Washington, DC, for Respondent

UNPUBLISHED DECISION^{1,2}

On November 5, 2012, the parties in the above-captioned case filed a Stipulation memorializing their agreement as to the appropriate amount of compensation in this case. Petitioner alleged that he suffered from myalgias, Devic's disease, neuromyelitis optica and/or partial transverse myelitis as a consequence of his receipt of a Tetanus-Diphtheria-acellular Pertussis ("Tdap") vaccine, which vaccine is contained in the Vaccine Injury Table, 42 C.F.R § 100.3(a), and which he received on or about February 27, 2008. Petitioner alleges that he experienced the residual effects of this injury for more than six months. Petitioner also represents that there have been no prior awards or settlement of a civil action for these damages.

¹ The special master intends to post this decision on the website of the United States Court of Federal Claims in accordance with the E-Government Act of 2002, Pub. L. No. 107-347, 116 Stat. 2899, 2913 (Dec. 17, 2002). All decisions of the special masters will be made available to the public unless they contain trade secrets or commercial or financial information that is privileged and confidential, or medical or similar information whose disclosure would clearly be an unwarranted invasion of privacy. As provided by Vaccine Rule 18(b), each party has 14 days to file a motion requesting the redaction from this decision of any such alleged material. In the absence of a timely request, which includes a proposed redacted decision, the entire document will be made publicly available.

² On November 20, 2012, the Decision issued November 19, 2012 was withdrawn due to an error in the amount of attorneys' fees and costs. This Decision corrects that error, but is otherwise unchanged.

Petitioner seeks compensation related to his injuries pursuant to the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10 to 34.

Respondent denies that the Tdap vaccine caused Petitioner's myalgias, Devic's disease, neuromyelitis optica and/or partial transverse myelitis, or any other injury and denies that Petitioner's current disabilities are sequelae of his alleged vaccine-related injury. Nonetheless, the parties have agreed informally to resolve this matter. Stipulation, Appendix A hereto. The undersigned hereby ADOPTS the parties' said Stipulation, attached hereto as Appendix A, and awards compensation in the amount and on the terms set forth therein.

Additionally, because Petitioner, pursuant to this decision, is being awarded compensation, Petitioner is entitled to an award of reasonable attorneys' fees and costs. 42 U.S.C. § 300aa-15(e). In their stipulation, the parties have agreed that an award of \$23,000.00, in attorneys' fees and costs would be reasonable. Petitioner has represented that he personally has not incurred any litigation costs. The undersigned finds that the amount requested is reasonable. In accordance with 42 U.S.C. §§ 300aa-15(b) and (e)(1), the undersigned awards the amount of attorneys' fees and costs to which Respondent has agreed.

Accordingly, Petitioner is awarded:

(a) a lump sum of \$140,000.00, in the form of a check payable to Petitioner.

This amount represents compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a); and

(b) a lump sum of \$23,000.00, in the form of a check made jointly payable to Petitioner and his counsel, Jason W. Whitley, Esquire, awarded pursuant to 42 U.S.C. §§ 300aa-15(b) and (e)(1).

The court thanks the parties for their cooperative efforts in resolving this matter. In the absence of a motion for review filed pursuant to RCFC, Appendix B, the Clerk is directed to enter judgment accordingly.³

IT IS SO ORDERED.

s/Daria J. Zane
Daria J. Zane
Special Master

³ This document constitutes a final "decision" in this case pursuant to 42 U.S.C. § 300aa-12(d)(3)(A). Unless a motion for review of this decision is filed within 30 days, the Clerk of the Court shall enter judgment in accordance with this decision. Pursuant to Vaccine Rule 11(a), the parties can expedite entry of judgment by each party filing a notice renouncing the right to seek review by a United States Court of Federal Claims judge.